

P-3007/NA-89-76 ORDER DENYING PETITION FOR RECONSIDERATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Darrel L. Peterson
Cynthia A. Kitlinski
Dee Knaak
Norma McKanna

Chair
Commissioner
Commissioner
Commissioner

In the Matter of the Minnesota
Independent Equal Access
Corporation's Application for a
Certificate of Public
Convenience and Necessity

ISSUE DATE: December 9, 1991

DOCKET NO. P-3007/NA-89-76

ORDER DENYING PETITION FOR
RECONSIDERATION

PROCEDURAL HISTORY

On January 11, 1991, the Minnesota Independent Equal Access Corporation (MIEAC) submitted a letter to the Commission stating its objections to paying the full regulatory costs of the P-3007/NA-89-76 proceeding. In its letter, MIEAC also waived its right to the 60 day time limit under Minn. Stat. § 237.295 (1990) for the Commission to order a contested case hearing. MIEAC indicated that a procedure based on the filing of briefs and reply comments may replace the need for a contested case hearing.

On February 5, 1991, US West Communications, Inc. (USWC) filed a letter in response to MIEAC's objection. USWC provided five reasons to explain why it should not bear any responsibility for the costs of the 89-76 proceeding.

On May 16, 1991, the Commission issued a notice to parties. The notice provided that MIEAC should present its objections and reasons in detail within 30 days. Parties were given 30 days to respond to MIEAC's objections and reasons.

On June 17, 1991, MIEAC filed its brief in support of its objection to the billings of the Minnesota Department of Public Service (the Department).

On July 17, 1991, MCI Communications, Inc. (MCI) and AT&T Telecommunications of the Midwest, Inc. (AT&T) submitted replies to MIEAC's brief.

On July 18, 1991, USWC and the Department submitted their replies to MIEAC's brief. The Department also submitted a request to accept its filing out-of-time. The Department explained that through miscommunication, the original and copies were not filed with the Commission until July 18, one day beyond the 30 days provided for in the Commission's notice.

On July 26, 1991, the Residential Utilities Division of the Office of the Attorney General (RUD-OAG) submitted a letter to the Commission to correct an error in MCI's reply to MIEAC's objections. The RUD-OAG clarified that it does not bill utilities for its costs in regulatory proceedings and has no authority to do so.

On September 23, 1991, the Commission issued its ORDER DENYING REQUEST FOR RELIEF FROM ASSESSMENT OF REGULATORY COSTS.

On October 14, 1991, MIEAC filed its Petition for Reconsideration of the Commission's September 23, 1991 Order.

On October 24, 1991, USWC and the Department filed their replies to MIEAC's Petition for Reconsideration.

On November 26, 1991, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

In its petition for reconsideration, MIEAC made three basic arguments:

MIEAC's first argument was an invitation to revisit the Commission's interpretation of the exception to the cost limitation provision in Subdivision 1 of the cost assessment statute, Minn. Stat. § 237.295 (1990). MIEAC argued that the Commission interpreted Subdivision 1 too narrowly by stating that an initial application proceeding was not within the subdivision's express cost limitation.

At base, this is not a new argument. The Commission finds nothing in the reiteration of this argument that casts doubt upon the soundness of the conclusion and reasoning stated in its September 23, 1991 Order at page 4:

The plain wording of the statute does not support MIEAC's view. The exception appears to authorize recovering from new entrants the cost of their entry into Minnesota as a regulated industry.

Second, MIEAC asserts that the Commission's finding that MIEAC had anticipated these regulatory costs when it established its capped rate is incorrect. The Commission's finding on this point, while fully supported by the record, was not central to the Commission's decision. See MIEAC, ORDER DENYING REQUEST FOR RELIEF FROM ASSESSMENT OF REGULATORY COSTS (September 23, 1991), p. 4. Therefore, MIEAC's argument cannot possibly be the basis for reconsidering the Commission's ultimate conclusion in this matter.

Third, MIEAC asserted that the Commission did not give appropriate weight to the impact of the decision on MIEAC and other potential applicants. On the contrary, the Commission carefully considered MIEAC's argument in this regard and concluded as follows:

The Commission does not find MIEAC's barrier-to-entry argument convincing. MIEAC had the opportunity, as do all market entrants, to request that their rates be set to recover regulatory costs. The Commission traditionally allows such costs to be recovered in rates.

....
[I]f MIEAC did fail to accurately project the regulatory costs in calculating its capped rate, the Commission is unconvinced that the burden of making up for that error should be borne by Minnesota taxpayers, as MIEAC suggests. MIEAC, ORDER DENYING REQUEST FOR RELIEF FROM ASSESSMENT OF REGULATORY COSTS (September 23, 1991), pp. 4 and 5.

In its petition for reconsideration, MIEAC provided no new argument to persuade the Commission that it erred in reaching those conclusions regarding the barrier-to-entry argument.

Commission Action

Based on the foregoing analysis, the Commission will deny MIEAC's petition for reconsideration of the September 23, 1991 Order in this matter.

ORDER

1. The petition of the Minnesota Independent Equal Access Corporation (MIEAC) for reconsideration of the Commission's September 23, 1991 ORDER DENYING REQUEST FOR RELIEF FROM ASSESSMENT OF REGULATORY COSTS is denied.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)